

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMNI INNOVATIONS, LLC, a
Washington limited liability company;
JAMES S. GORDON, JR., a married
individual,

Plaintiffs,

v.

STAMPS.COM, INC. a Delaware and
California corporation; and
JOHN DOES, I-X,

Defendants.

NO. CV07-0386 MJP

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS**

NOTE ON MOTION CALENDAR:
August 17, 2007

THIS MATTER comes before the Court on the Motion to Dismiss ("Motion") filed by Defendant Stamps.Com, Inc. ("Stamps.com"). The Court, having reviewed the pleadings on file, including the Motion, Plaintiffs' Response, and Defendant's Reply thereto, hereby finds and orders that:

1. The federal CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.* ("CAN-SPAM") does not impose liability for immaterial errors in the header information of commercial email.

2. CAN-SPAM preempts the Washington Commercial Electronic Mail Act, RCW 19.190 *et seq.* ("CEMA") to the extent that CEMA pertains to immaterial errors in

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NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

the header information of commercial email. Gordon v. Virtumundo et al., Case No. CV06-0204-JCC, W.D.Wash. (Coughenour, J.) (“Virtumundo”); *See also* Omega World Travel, Inc. v. Mummagraphics, Inc., 469 F.3d 348 (4th Cir. 2006) (holding that CAN-SPAM preempts Oklahoma’s state commercial email statute to the extent that it pertains to immaterial errors.)

3. CEMA does not impose liability for immaterial errors. Benson v. Or. Processing Serv., 2007 Wash. App. LEXIS 31 (Wash. Ct. App. 2007).

4. Plaintiffs’ allegations are identical to those asserted by Plaintiffs in Virtumundo and as in that case, represent immaterial errors in email header information.


5. Accordingly, Plaintiffs’ First and Second Causes of Action under CAN-SPAM and CEMA are dismissed with prejudice.

6. Plaintiffs’ Washington Consumer Protection Act, RCW 19.86, claims are based on Plaintiffs’ insufficient CEMA claims. Accordingly, Plaintiffs’ Third Cause of Action under the CPA is dismissed with prejudice.

DATED this ____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE
The Honorable Marsha Pechman

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

By: 
Derek A. Newman, WSBA No. 26967
derek@newmanlaw.com
Randy Moeller, WSBA No. 21094
randy@newmanlaw.com

Attorneys for Defendant
Stamps.Com Inc.